

SC TEMPORARY REVENUE RULING #14-9

**SUBJECT:** South Carolina Tax Treatment of Same-Sex Marriage  
(Property Taxes and Deed Recording Fees)

**DATE:** Applies to all periods open under the statute.

**REFERENCES:** S.C. Constitution, Article XVII, Section 15  
S.C. Code Ann. Section 12-37-220(2014)  
S.C. Code Ann. Section 12-37-250 (2014)  
S.C. Code Ann. Section 12-37-252 (2014)  
S.C. Code Ann. Section 12-43-220 (2014)  
S.C. Code Ann. Section 12-24-40 (2014)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4)(2005)  
SC Revenue Procedure #09-3

**SCOPE:** The purpose of a Temporary Revenue Ruling is to provide immediate guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is, however, temporary, and is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

**South Carolina's Tax Treatment of Same-Sex Marriages**

Same-sex marriages are now required to be recognized in South Carolina for tax purposes. Accordingly, same-sex couples who are legally married under any state law will now be treated as married for all South Carolina tax purposes and will be treated as "spouses" for all South Carolina tax purposes. For more information on South Carolina's recognition of same-sex marriages and South Carolina income taxes, see SC Temporary Revenue Ruling #14-8.

This advisory opinion will provide examples of ad valorem property tax and deed recording fee provisions that now apply to same-sex couples.

**Note: To provide immediate guidance, this advisory opinion is being issued as a temporary revenue ruling. This will provide guidance to the public and to Department employees while the Department seeks comments concerning this advisory opinion. Standard Department practice is to hold a three week comment period on advisory opinions. Once the comment period ends and the Department completes its review of the public comments, the Department will issue a final revenue ruling. This temporary revenue ruling represents the official opinion of the Department until such time as a final revenue ruling is issued.**

### **Property Taxation**

For ad valorem property taxes, the recognition of same-sex marriages may result in a same-sex couple being able to qualify their legal residence for the 4% assessment ratio provided in Code Section 12-43-220(c) or the homestead exemption under Code Sections 12-37-250 and 12-37-252. The recognition of same-sex marriages may also disqualify a person from qualifying for the 4% assessment ratio. For example, if each individual of a same-sex couple owned their own residence, only one of the residences may now qualify for the 4% assessment ratio since as a married couple they may have only one legal residence.

A person in a same-sex marriage now qualifies as a “spouse” or a “surviving spouse” for purposes of the exemptions contained in Code Section 12-37-220 (*e.g.*, home of certain disabled veterans, law enforcement officers and firefighters (Code Section 12-37-220(B)(1)) and home of a paraplegic or hemiplegic person (Code Section 12-37-220(B)(2))). Also, transfers of real property between spouses of a same-sex couple may now be exempted from the assessable transfer of interest rules contained in Code Section 12-37-3150(B).

### **Deed Recording Fee**

For purposes of the deed recording fee, the recognition of same-sex marriages will now exempt from the deed recording fee deeds that transfer realty to a same-sex spouse (Code Section 12-24-40(4) and SC Regulation 117-1350.1, Question #10). Deeds that transfer realty to a former same-sex spouse will be exempt if the transfer is pursuant to the terms of the divorce decree or settlement (Code Section 12-24-40(4)).

In addition, deeds from a family partnership, one in which all partners are members of the same family, to one of the partners are exempt as long as no consideration is paid for the transfer other than a reduction in the grantee’s interest in the partnership (Code Section 12-24-40(9)). Since the definition of “family” in this exemption (Code Section 12-24-40(9)) includes a “spouse,” the exemption applies to family partnerships that include same-sex spouses.

For additional information on deed recording fee exemptions, see Code Section 12-24-40 and SC Regulation 117-1350.1.

## **Refunds**

The recognition in South Carolina of same-sex marriages may allow a same-sex couple, or a same-sex spouse or surviving spouse, to be eligible for a refund of previously paid property taxes or deed recording fees with respect to an applicable exemption or special assessment if the same-sex couple was considered legally married under any state law for the period for which the refund is requested and the refund request is made within the statutory time limitations established under the law.

## **Additional Information**

For information on these and other exemptions from property taxes and the deed recording fee, or general information on property taxation, the deed recording fee and other taxes, visit the Department of Revenue website at [www.sctax.org](http://www.sctax.org).

For information about requesting a property tax refund, please contact the appropriate county.<sup>1</sup> For information about requesting a deed recording fee refund, see SC Revenue Procedure #97-3 at [www.sctax.org](http://www.sctax.org).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III  
Rick Reames III, Director

December 2 \_\_\_\_\_, 2014  
Columbia, South Carolina

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<sup>1</sup> For certain exemptions administered by the Department, the applicable taxpayer will need to apply for the exemption with the Department, have the exemption granted, and then request a refund from the county.